

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1428

Introduced by Senator Scott

February 22, 2006

An act to ~~amend Section 606.5 of~~ *add Section 679 to* the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1428, as amended, Scott. Unemployment compensation: ~~employment; loaned employee; employer; motion picture industry.~~

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services, provided that certain requirements are satisfied.

This bill would provide that, notwithstanding those provisions, any employing unit that has control of the payment of wages, as specified, to a worker performing services in the motion picture industry, as defined, shall be treated as an employer of that worker.

~~Existing law governing unemployment insurance defines "employment" for those purposes, and, with respect to an employee who is loaned from one employer to another, specifies the circumstances under which the loaning employer is continued to be treated as the employer of the loaned employee.~~

~~This bill would make nonsubstantive technical changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 679 is added to the Unemployment
2 Insurance Code, to read:

3 679. (a) Notwithstanding Sections 606.5 and 621, for
4 purposes of this code, “employer” also means any employing
5 unit that has control of the payment of wages, as described in
6 Section 3401(d)(1) of the Internal Revenue Code, to a worker in
7 the motion picture industry, and the worker shall be treated as
8 the employee of that employer.

9 (b) For purposes of this section, the “motion picture industry”
10 means any industry, business, or establishment operated for the
11 purpose of motion picture or television film production, or
12 primarily allied with theatrical or television, motion picture
13 productions, including, but not limited to, motion pictures for
14 entertainment, commercial, religious, or educational purposes,
15 whether made by film, tape, or otherwise.

16 SECTION 1. ~~Section 606.5 of the Unemployment Insurance~~
17 Code is amended to read:

18 606.5. (a) ~~Whether an individual or entity is the employer of~~
19 ~~specific employees shall be determined under common law rules~~
20 ~~applicable in determining the employer-employee relationship,~~
21 ~~except as provided in subdivisions (b) and (c):~~

22 (b) ~~As used in this section, a “temporary services employer”~~
23 ~~and a “leasing employer” is an employing unit that contracts with~~
24 ~~clients or customers to supply workers to perform services for the~~
25 ~~client or customer and performs all of the following functions:~~

26 (1) ~~Negotiates with clients or customers for such matters as~~
27 ~~time, place, type of work, working conditions, quality, and price~~
28 ~~of the services.~~

29 (2) ~~Determines assignments or reassignments of workers, even~~
30 ~~though workers retain the right to refuse specific assignments.~~

31 (3) ~~Retains the authority to assign or reassign a worker to~~
32 ~~other clients or customers when a worker is determined~~
33 ~~unacceptable by a specific client or customer.~~

34 (4) ~~Assigns or reassigns the worker to perform services for a~~
35 ~~client or customer.~~

1 ~~(5) Sets the rate of pay of the worker, whether or not through~~
2 ~~negotiation.~~

3 ~~(6) Pays the worker from its own account or accounts.~~

4 ~~(7) Retains the right to hire and terminate workers.~~

5 ~~(e) If an individual or entity contracts to supply an employee~~
6 ~~to perform services for a customer or client, and is a leasing~~
7 ~~employer or a temporary services employer, the individual or~~
8 ~~entity is the employer of the employee who performs the~~
9 ~~services. If an individual or entity contracts to supply an~~
10 ~~employee to perform services for a client or customer and is not~~
11 ~~a leasing employer or a temporary services employer, the client~~
12 ~~or customer is the employer of the employee who performs the~~
13 ~~services. An individual or entity that contracts to supply an~~
14 ~~employee to perform services for a customer or client and pays~~
15 ~~wages to the employee for the services, but is not a leasing~~
16 ~~employer or a temporary services employer, pays the wages as~~
17 ~~the agent of the employer.~~

18 ~~(d) When there is a loan of an employee from one employer to~~
19 ~~another employer wherein the direction and control of the~~
20 ~~manner and means of performing the services changes to the~~
21 ~~employer to whom the employee is loaned, the loaning employer~~
22 ~~shall continue to be the employer of the employee if the loaning~~
23 ~~employer continues to pay remuneration to the employee,~~
24 ~~whether or not reimbursed by the other employer. If the employer~~
25 ~~to whom the employee is loaned pays remuneration to the~~
26 ~~employee for the services performed, that employer shall be~~
27 ~~considered the employer for the purposes of any remuneration~~
28 ~~paid to the employee by the employer, regardless of whether the~~
29 ~~loaning employer also pays remuneration to the employee.~~